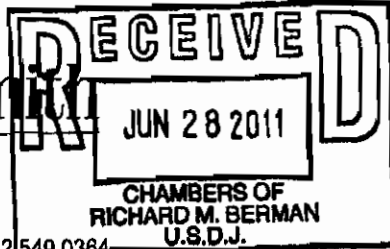
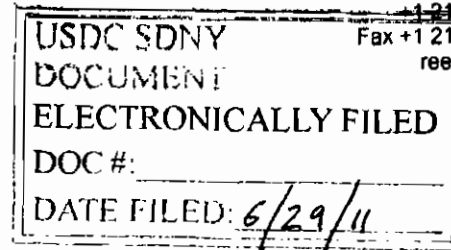


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June 28, 2011

By Hand Delivery

The Hon. Richard M. Berman
United States District Judge
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, NY 10007

MEMO ENDORSED

pg. 2

The Name LLC v. David Americo Ortiz Arias a/k/a David Ortiz et al.
No. 10-CV-~~3218~~ (RMD/DF)
3212

Dear Judge Berman:

We represent Plaintiff The Name LLC ("Plaintiff") in the above-referenced action and write to inform the Court of a unique circumstance that is prompting Plaintiff to seek permission to file a Second Amended Complaint, with Defendant's consent, in advance of the Parties filing a Stipulation of Dismissal of the action.

As the Court is aware, the parties have reached an agreement in principle to settle this action in its entirety. The parties are currently memorializing their agreement, which includes certain complex licensing rights, and we anticipate submitting a fully executed Stipulation of Dismissal within ten (10) days.

However, before the parties file the Stipulation of Dismissal, Plaintiff needs to file a Second Amended Complaint for the sole purpose of correcting certain inaccurate statements contained in the current Amended Complaint. The specific statements relate to Plaintiff's involvement with operations of the nightclubs that utilize the "40/40" and "40/40 CLUB" trademarks and service marks (the "40/40 Marks") at issue in this case.

Specifically, the current Amended Complaint states that Plaintiff operates certain 40/40 Clubs that utilize the 40/40 Marks. See, e.g., Amended Complaint at ¶¶ 1, 17, which we recently learned is not accurate. In fact, Plaintiff only licenses the 40/40 Marks to other corporate entities which actually own and operate the 40/40 Clubs. The inaccurate statements relating to Plaintiff's involvement with the operations of the 40/40 Clubs are being used against Plaintiff in an unrelated action, so Plaintiff needs to clarify the public record by filing a Second Amended Complaint in the form submitted herewith.

Defendant consents to the filing of the Second Amended Complaint. Therefore, we respectfully request that Your Honor "so order" the enclosed Stipulation so that we can file the Second Amended Complaint

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The Hon. Richard M. Berman
June 28, 2011
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with the Clerk's office. We assure the Court that the settlement is still on, and the Stipulation of Dismissal will be filed within ten (10) days.

We thank the Court for its attention to this matter.

Respectfully submitted,



Peter D. Raymond

PDR:dc

Enclosures

cc: Philip Touitou, Esq., Counsel for Defendant (by email without enclosures)

<p>On consent, pl may file a 2d amended complaint on or before July 5, 2011. The case will be discontinued as of July 11, 2011 in accordance with Counsel's representation herein (FINAL).</p> <p>SO ORDERED Date: 6/29/11 <u>Richard A. Berman</u> Richard M. Berman, U.S.D.J.</p>
